

SUMMARIES

TERRITORIAL SCOPE OF THE GENUINE USE OF COMMUNITY TRADE MARKS

Mihály Ficsor

The Community trade mark system does not meet the needs and requirements of the EU's internal market. Nor does it ensure that competition is not distorted. As a result, the Community trade mark system fails to achieve its ultimate and fundamental objective, namely that it should promote, throughout the Community, a harmonious development of economic activities. This failure is primarily due to the way the territorial scope of the genuine use requirement is currently regulated and interpreted at Community level. The balance between the Community and national trade mark systems would only be properly re-established if the genuine use requirement, and, in particular, its territorial scope were at last revisited and thoroughly re-defined. The starting point for this exercise could perhaps be a judgement of the CFI, which states that "genuine use means that the mark must be present in a substantial part of the territory where it is protected", complying with the general principle that rights should carry with themselves corresponding obligations.

GUARANTEE AND RESPONSIBILITY FOR THE PRODUCT IN THE LICENSING CONTRACT FROM THE POINT OF VIEW OF UNIVERSITIES AS LICENCE PROVIDERS

István Molnár – Péter Mezei

The present article – as part of a series on intellectual property of the universities – discusses warranty and liability questions concerning the agreements on technology transfer, and it elaborates the warranty and product liability issues that may arise under a patent license agreement. The special position of the university as licensor is placed in the center of the research. Both the substantive content and the legal consequences of the warranty were discussed, and the objective and culpable character of legal consequences were also covered. The conclusion is that the clarification of the regulations on warranty may be required, either by careful contractual practice, or by using a model contract, or by statutory amendments. The article also proved that these above mentioned methods of clarification can have a favorable effect both upon the university as licensor and upon all the other members of licensing connections. Nevertheless, an impact study of the statutory amendment is indispensable, partially due to the fact that all the other types of use contracts refer to the rules on use contracts covered by the Patent Act. It was also proved by the article that the licensor – due to the tightly defined scope of subjects of product liability – is generally

free from product liability, however, the licensor's restricted liability may occur under the general civil law rules in extremely special situations. In connection to this it was pointed out that the protection of licensor is resolvable with the cautious application of regulations, and responsible, good faith contribution in practical life.

ROLE OF THE CLAIMS IN THE PATENT LAW – PART I CERTAIN QUESTIONS OF PATENTABILITY – STATE OF THE ART, NOVELTY AND INVENTIVE STEP

Zsófia Kacsuk

The present paper examines the key requirements of patentability in the Hungarian and in the European legal systems defined by the European Patent Convention. The first part of the paper attempts to give a legal and economical account of the „state of the art”, which serves as a reference point for novelty and inventive step. The second part of the paper focuses on the practical aspects of examining novelty and inventive step. The later is discussed in the form of a decision model as a proposed way of implementing the problem and solution approach adopted by the European Patent Office.

THE PATENT REFORM MOVEMENT AND THE CHANGES OF THE JUDICIARY PRACTICE IN THE UNITED STATES OF AMERICA IN THE LAST TWO DECADES

Dr Tivadar Palágyi

This paper deals with the patent reform movement and the changes of the judiciary practice in the U. S. A. in the last two decades. The reform bills of 1999, 2001, 2005, 2007 and 2009 are treated in detail. The Report of the Federal Trade Commission of 2003 as well as the plans of the United States Patent and Trademark Office for the 21th century are also discussed. The *Festo v. Shoketshu* decision of 2000, the *KSR v. Teleflex* decision of 2007 and the *In re Bilski* case, which are outlined in detail, have serious implications for the traditional patent system. The author hopes that the long-awaited change from the first-to-invent system to the first-to-file system will occur in the near future.

NOTES ON THE HUNGARIAN LEGO DECISIONS – HARMONISATION PROBLEMS IN HUNGARIAN TRADE MARK LAW – PART II

András Lendvai

In the second part of the study, the author analyses the decisions of the Hungarian court in connection with the abstract and concrete distinctiveness and the functionality of the Hungarian Lego marks in light of the practice of the European Court of Justice (ECJ). The study also contains a short explanation of the theoretical background of the functionality

doctrine. The author sets out his assessment of the validity of the Hungarian Lego marks and tries to find out the reasons why the Hungarian Lego decisions go against the decisions of the European authorities and courts in the cases related to the almost identical community trade mark of Lego. The author concludes that the Hungarian Lego decisions show substantial discrepancies from the perspectives of the harmonisation process. Hungarian courts refused all arguments which aimed at the protection and enhancement of competition on the relevant market. The reluctant approach of the courts to focus on the competition and market related aspects of trade mark law may have historic reasons. The minor discrepancies in the implementation of the trade mark directive may also have a role in the controversial approach of the courts. Furthermore, it is also clear that basic theoretical matters have not been clarified in the legal literature. The mixture of these reasons may cause systematic problems on the longer term and create a less market friendly environment. Therefore, it is vital to commence the clarification of these points in order to achieve the real harmonisation of Hungarian trade mark law.

THE TRADEMARKS OF THE FUTURE

Dr Natalie Náthon

The continuous development and progress of technology has an impact on trademarks as well. New types of trademark are already emerging in the market; the so-called non-conventional signs target the various senses of human beings, their perception may differ from the point of view of the consumers, and rise new challenges. The present article wishes to present some of those signs, namely motion marks, gesture marks, holograms, light marks and position marks. Besides giving an overview of the jurisprudence of the European Union, the author outlines the regulations and practice of the United States as well.

FAIRNESS – UNFAIRNESS. DECISION OF THE EUROPEAN COURT OF JUSTICE IN THE GILLETTE CASE

Dr Sándor Vida

The defendant LA-Laboratories manufactured and sold razors in Finland with a packing bearing the words „all Parson Flexor and Gillette Sensor handles are compatible with this blade” (i.e. the blade of the defendant). The claimant Gillette Co. brought proceedings and the Helsinki District Court condemned the defendant, but the Court of Appeal reversed this decision. The claimant appealed to the Supreme Court, which referred to the ECJ. The latter in his judgement (C-228/03) defined the notion of ”honest practices” figuring in Art. 6 (1) of the Directive. An analogous process took place in Sweden too, against an other defendant. – Reported is on commentaries of *Po-Jen Yap, Rowley, Smith, Steinbeck, Bacher and Evelukwa*. – Reported is also on the Recommendation of LIDC (Vienna, 2009) on ”honest practices” in respect of look alikes.